

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Umicore Precious Metals Chemistry USA,
LLC and Umicore AG & Co. KG,

Plaintiffs,

v.

Trustees of Boston College,

Defendant.

REQUEST FOR ORAL ARGUMENT
Civil Action No. 1:22-cv-12232-GAO

**Leave to File Under Seal Granted May
26, 2023, ECF 19**

PUBLIC REDACTED VERSION

DEFENDANT TRUSTEES OF BOSTON COLLEGE’S MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Trustees of Boston College (“Boston College”) moves to dismiss Umicore Precious Metals Chemistry USA, LLC and Umicore AG & Co. KG’s (collectively, “Plaintiffs” or “Umicore”) Complaint for failure to state a claim upon which relief can be granted. The grounds for Boston College’s motion are set forth in detail in Defendant’s supporting Memorandum of Law which is filed herewith, and may be summarized as follows:

1. Plaintiffs have alleged that Umicore is entitled to an exclusive license of U.S. Patent No. 9,938,253 (“the ’253 Patent”) pursuant to the parties’ License Agreement because Plaintiffs claim that [REDACTED].

2. “Domination” is a term of art in the patent context. One patent is “dominated” by another patent when “the more narrowly claimed invention cannot be practiced without infringing the broader claim.” *In re Kaplan*, 789 F.2d 1574, 1577-78 (Fed. Cir. 1986). Here, Umicore does not allege that [REDACTED].

U.S. Patents Nos. 6,921,735 (“the ’735 Patent”) and 10,584,141 (“the ’141 Patent”). *See* Compl. ¶ 25.

3. Instead, Umicore only alleges that the [REDACTED]

[REDACTED] Compl. ¶ 25 (emphasis added). Umicore has therefore conceded that [REDACTED]

[REDACTED]

Umicore's Complaint therefore fails to state a claim upon which relief may be granted and should be dismissed.

WHEREFORE, Boston College respectfully requests that this Honorable Court:

- A. Dismiss the Complaint with prejudice; and
- B. Grant such additional or alternative relief as is deemed appropriate.

REQUEST FOR ORAL ARGUMENT

Boston College believes that oral argument on its Motion to Dismiss may assist the court in its decision and wishes to be heard on its Motion.

Dated: May 26, 2023

Respectfully Submitted,

Trustees of Boston College

By their attorneys,

/s/ Brian Drummond

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LOCAL RULE 7.1 CONFERENCE

I, Brian Drummond, hereby certify that counsel for Boston College conferred in good faith with counsel for Plaintiffs in an effort to narrow or obviate the need for this Motion. Counsel were unable to resolve the issues presented in this motion.

/s/ Brian Drummond

Brian Drummond (BBO# 688856)

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2023, I electronically filed the foregoing DEFENDANT TRUSTEES OF BOSTON COLLEGE'S MOTION TO DISMISS with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all attorneys of record.

/s/ Brian Drummond

Brian Drummond (BBO# 688856)